

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

NOV 25 2002

IN THE MATTER OF THE PETITION OF INDIANA }
BELL TELEPHONE COMPANY, INCORPORATED, }
D/B/A AMERITECH INDIANA PURSUANT TO }
I.C. 8-1-2-61 FOR A THREE-PHASE PROCESS }
FOR COMMISSION REVIEW OF VARIOUS }
SUBMISSIONS OF AMERITECH INDIANA TO }
SHOW COMPLIANCE WITH SECTION 271(c) OF }
THE TELECOMMUNICATIONS ACT OF 1996 }

CAUSE NO. 41657

SUPPLEMENTAL AFFIDAVIT OF JAMES D. EHR

James D. Ehr affirms under the penalties for perjury as follows:

1. I am Director of Performance Measures for Ameritech Corporation ("Ameritech"), a wholly owned subsidiary of SBC Communications Inc. My business address is 2000 West Ameritech Center Drive, Location 4G60, Hoffman Estates, Illinois 60196. I am over the age of 18 years, and have personal knowledge of the facts set forth herein.

2. I am the same James D. Ehr who signed the affidavit dated November 4, 2002 that was filed in this proceeding on November 6, 2002 ("Initial Affidavit" or "Initial Aff.").

3. The purpose of this Supplemental Affidavit is to respond to the six assertions in the Affidavit of Karen W. Moore filed in this proceeding on November 18, 2002 ("Moore Affidavit" or "Moore Aff.") on behalf of AT&T Communications of Indiana, GP and TCG

- (a) That it will not be costly for Ameritech Indiana to implement the IURC Remedy Plan, Moore Aff. ¶ 15;¹
- (b) That Ameritech Indiana should make Payments to CLECs even when the results, based on the IURC Methodology, are expected to show disparity or failure to meet a benchmark based only on random variation inherent in the processes measured, and not on deficiency or defect in the process or Ameritech Indiana's execution of it, *id.* ¶¶ 16-17;
- (c) That Ameritech Indiana's estimates of Payments cannot be relied upon because AT&T believes Ameritech Indiana overstates performance results, *id.* ¶¶ 19, 21 & Ex. KWM-01;
- (d) That annual Payments of \$6.5 million for performance that is better than can statistically be expected under the IURC Remedy Plan is not a significant amount of money, *id.* ¶ 22;
- (e) That Ameritech Indiana somehow proposed modifications to a "Step-Down" table that never existed prior to being proposed by Ameritech Indiana in this proceeding, *id.* ¶¶ 25-26; and
- (f) That Ameritech Indiana does not understand the costs of performance measure audits nor its own proposed "mini-audit" requirements, *id.* ¶ 28.

**The IURC Remedy Plan Imposes Unnecessary and Burdensome
Implementation And Compliance Costs on Ameritech Indiana**

4. The IURC Remedy Plan introduces a number of requirements that are not a part of any other remedy plan an Ameritech Company is subject to. My Initial Affidavit provides an estimate of the incremental costs, above and beyond those Ameritech already anticipates incurring, to implement, maintain and operate a remedy plan for Ameritech Indiana. The Moore Affidavit (a) refers to Table 1 of my Initial Affidavit that (as titled) provides estimates of the incremental costs Ameritech will have to incur to comply with the IURC Plan, and (b) claims that my Initial Affidavit "cites" two reasons for the estimates: "Data retention for three years

¹Capitalized terms used and not otherwise defined in this Supplemental Affidavit have the same meanings as in my Initial Affidavit and in Ameritech Indiana's Petition for Reconsideration filed in this proceeding on November 6, 2002.

and root cause analysis by Ameritech; and Elimination of the K table exclusion on remedy payments”. Moore Aff. ¶ 9 (citation footnotes omitted).

5. However, Ms. Moore apparently did not look at the individual rows of Table 1, nor at footnote 2 of my Initial Affidavit, which provide explanation of what comprise the incremental costs. A straightforward reading of Table 1 clearly identifies the sources of the incremental costs – Additional Staffing, Additional Information Technology Capital Costs (computer and data storage devices), and State-Specific Comprehensive Annual Audit costs. Additionally, footnote 2 of my Initial Affidavit further details-out the specific components of the IURC Plan that drive the need for additional staffing. Hence, Ms. Moore’s assertions that my Initial Affidavit “contains no backup” and that she “can see no other supporting rationale,” Moore Aff. ¶ 10, are refuted simply by reading of my Initial Affidavit.

6. The Moore Affidavit goes on to discuss how some “major part” of Ameritech Indiana’s compliance costs are “the same regardless of the remedy plan adopted.” *Id.* ¶ 10. The Moore Affidavit does not define what “major” is, nor what amount of money that equates to, so it seems this statement is actually speculation with no factual basis.² While Ms. Moore is correct that the total costs required to comply with the Commission’s Order include costs that are already incurred by Ameritech Indiana in the production and reporting of performance measures, the Initial Affidavit’s discussion here is on *incremental* costs, not total costs. Clearly, Ameritech

²Of course, Ms. Moore should not be expected to understand the costs Ameritech incurs to implement and produce the performance measures and remedy plans within any one State, or the five-State Ameritech region, as that is not her responsibility. I, however, do have responsibility for the implementation and operation of Ameritech’s wholesale performance assurance plans, and do understand those costs.

Indiana incurs significant expense today to collect the data, calculate the numerators and denominators, and report the performance measure results to the Commission and CLECs, and is prepared to incur additional costs to implement an appropriate Indiana remedy plan. What is at issue is that specific requirements of the IURC Plan impose *unnecessary* and *burdensome* costs on Ameritech Indiana, and Ameritech Indiana has identified the items that create those costs and estimated the dollar amounts. The costs identified in my Initial Affidavit are above and beyond the costs that would be required to implement the Ameritech Compromise Plan.

7. Ms. Moore also incorrectly claims that my Initial Affidavit asserts that “the Performance Assurance Plan’s requirement of a three-year data retention policy is somehow costly,” Moore Aff. ¶ 12. My Initial Affidavit asserts no such thing. Rather, it indicates, as an example of unnecessary and burdensome costs, the requirement in the IURC Plan to retain “intermediate-state data” for a period of three years. Such data is not required to reconcile results with a CLEC’s data; nor is it required for an independent third party to conduct an audit. And retention of such data is not required for any other Ameritech Company. Clearly, a requirement to retain such data will require capital investment (additional computer and data storage equipment) and additional software development and management costs. Ameritech Indiana does not understand why such data would need to be retained, in light of the other data retention requirements the Commission has ordered. While it is true that Ameritech Indiana’s current policy and ongoing commitment is to retain for three years the data that *is* required to support CLEC reconciliation of ~~reported results~~ and to support ~~independent~~ third party audits, “intermediate-state data” (as the Commission defines it) is *not* required to support either of those

8. “Root-cause analysis” is an effective process, executed on a business-to-business basis, to address operational concerns of individual CLECs. CLECs often have unique business plans, different operational processes and capabilities, and as a result do business differently. This can lead to variances in the performance Ameritech Indiana provides between CLECs. Accordingly, the Ameritech Compromise Plan called for a formal root cause analysis process to be executed, upon request of the CLEC, when performance for a specific measure did not meet or exceed the standard of comparison for several consecutive months. To the extent the IURC Plan also includes a CLEC-initiated, business-to-business root cause analysis process, Ameritech Indiana has not objected. However, the IURC Plan goes well beyond this requirement.

9. The IURC Plan *mandates* root cause analysis, which is defined in detail in Section 13, in situations where Ameritech Indiana’s performance on any individual Tier 2 submeasurement “is still deficient” at the end of a rolling three-month period. This mandate is the critical issue. Section 13 of the IURC Plan provides detailed requirements for the root cause analysis that (Ameritech Indiana assumes) must be complied with. As a result, the IURC Plan has transformed what was proposed as an effective tool to maintain business-to-business relationships into a regulatory requirement. Ameritech Indiana must plan and staff appropriately to meet those requirements. As no other Ameritech-region State has such a requirement, Ameritech must incur additional staffing costs to be in a position to comply with this component of the IURC Plan. In addition, Section 5.3 of the IURC Plan requires that Payments to CLECs be traceable to the specific cause of the failure to meet or exceed the standard, and states that

would require Ameritech Indiana to conduct root cause analysis in situations other than upon CLEC request or rolling three-month Tier 2 performance shortfalls. The IURC Plan does not simply allow for root cause analysis; it requires root cause analysis, and accordingly increases the costs Ameritech Indiana will incur to operate and manage the performance assurance processes.

10. As shown, the implementation of the IURC Remedy Plan be very costly for Ameritech. There are major requirements unique to the IURC Plan that will increase costs beyond those required for the Ameritech Compromise Plan. Those costs, based on what the IURC Plan requires of Ameritech Indiana, are unnecessary and burdensome.

The IURC Plan's Elimination of the K-Table and Failure to Adjust the Statistical Confidence Level Results in Payments to CLECs for Random Variation in Results

11. Ms. Moore states that my Initial Affidavit makes the "claim that elimination of the k table exclusion on remedy payments also somehow contributes to [the Initial Affidavit's] \$7 million cost estimate". Moore Aff. ¶ 14. She also states she "believe[s] that elimination of the k table exclusion does not impose any Indiana-specific implementation and compliance costs as claimed by Mr. Ehr." *Id.* Ms. Moore is, plainly and clearly, incorrect on both counts.

12. Nowhere does my Initial Affidavit assert or claim that the IURC Plan's elimination of the Original Ameritech Plan's K table – which is the statistical tool used to maintain the 95% confidence level that failed tests are not due to random variation (as opposed to Ms. Moore's assertion that the K table is an exclusion on remedy Payments) is in any way related to the annual incremental implementation and compliance costs. Nowhere does my

Initial Affidavit even quantify the impact of the K table. In fact, my Initial Affidavit explicitly states that “[t]he implementation and compliance costs summarized in Tables 1 and 2 exclude the Payments to CLECs and the State of Indiana” under the IURC Plan. Initial Aff. ¶ 8.

13. While Ms. Moore is correct in identifying that Ameritech Indiana provided (in the Ameritech Compromise Plan) an alternative approach to addressing the issue of random variation resulting in performance that fails to meet or exceed the defined standard, it is just that – an alternative approach – which like the K table must be assessed as to how it interacts with other components and features of the remedy plan. The function of the K table is to maintain the 95% confidence factor that disparity in performance actually has occurred when a group of results, each with its own 95% confidence factor, is assessed. In eliminating the K table, the IURC Plan ensures that Ameritech Indiana will make Payments to CLECs even when performance is at very high levels (above 95% measures met), and where the IURC Methodology’s statistics would not confirm that disparity in performance (as opposed to random variation) exists. The Ameritech Compromise Plan proposal would have accepted the elimination for the K table in conjunction with other changes that appropriately addressed the issue of confidence level in determining disparity.

14. Ms. Moore asserts that my Initial Affidavit “states” the Ameritech Compromise Plan “methodology literally does the same thing as the k table; it eliminates remedy payments by allowing poor service to escape notice via adding additional ‘wiggle room’ to performance results.” Moore Aff ¶ 17 This assertion is incorrect. The issue involves establishing the appropriate confidence level in the statistical evaluation the IURC Plan calls for. The K table is

designed to maintain a 95% confidence level that the test results subject to remedy Payments truly show disparate service levels or failure to meet benchmarks (as opposed to random variation). Elimination of the K table calls for an adjustment to the confidence factor used for individual tests to manage, to an appropriate level, the number of times Ameritech Indiana will be required to make payments when service provided was not in disparity. In no way does the Ameritech Compromise Plan adjust or excuse poor performance, or amount to “rounding up” test results. The Ameritech Compromise Plan simply sought to maintain an appropriate level of statistical certainty as to the need for remedy Payments – a certainty that is significantly reduced with elimination of the Original Ameritech Plan’s K table.

15. Ms. Moore also asserts that “Illinois and Wisconsin both eliminated the k table exclusion, in part due to Ameritech’s own touted ‘Compromise Remedy plan,’” Moore Aff. ¶ 14. This assertion, too, is incorrect. Wisconsin ordered a remedy plan in October 2001 (which has since been overturned on judicial review) that eliminated the K table. The Ameritech Compromise Plan was first filed in Wisconsin in late summer 2002. In Illinois, elimination of the K table was first proposed in a January 2002 Hearing Examiner’s Proposed Order (“HEPO”). The HEPO, which in almost all respects was reflected in the Illinois Commission’s July 2002 order, predated the first Illinois filing of the Ameritech Compromise Plan by a number of months.

The Initial Affidavit’s Estimates of Payments Under the IURC Remedy Plan are Reliable (and, if Anything, Underestimate the Amount of Such Payments)

16. My Initial Affidavit’s estimates of remedy Payments under the IURC Remedy Plan are based upon reported results Indiana CLECs have relied upon, without advising

Ameritech of any situations where the accuracy was questioned, for several years. Ms. Moore suggests that the performance results relied upon in the Initial Affidavit's estimates of remedy Payments are overstated. If such performance results were in fact overstated, then the Initial Affidavit's estimates of remedy Payments would be *understated* – in other words, the Payments required under the IURC Plan would be even higher than the estimates in the Initial Affidavit.

17. In support of her position that the performance results on which the Initial Affidavit bases its Payment estimates are unreliable, Ms. Moore presents a number of issues from the BearingPoint OSS test that address points where BearingPoint felt there was a problem with, or that Ameritech needed to improve, some component of the performance measurement systems and/or processes. Notably, Ms. Moore provides this “laundry list” of issues without providing the current status on any of them. The Commission and other parties can review the individual “Exceptions” noted on the public OSS test web site (<http://www.osstesting.com>), and develop their own detailed understanding of the current status of each. To summarize the current statuses, though, Ameritech has already addressed the issues that Ms. Moore notes as follows:

- Exceptions Closed as Satisfied by SBC Ameritech – 42 and 47
- Exceptions In BearingPoint Retest/Validation – 19, 20, 41 and 157

18. In other words, two of the six issues Ms. Moore describes have been resolved to BearingPoint's satisfaction, and Ameritech has taken necessary actions and provided evidence to BearingPoint to enable it to resolve the other four. Accordingly, Ms. Moore's representation that BearingPoint has concluded “SBC Ameritech's performance collecting and reporting systems are inherently unreliable” is not accurate. Clearly, the BearingPoint performance measures review is

a work in progress, and when the current status of the review is considered, the issues Ms. Moore presents do not support her conclusion.

19. The Moore Affidavit also attaches Exhibit KWM-01 from an affidavit Ms. Moore submitted in the Michigan 271 proceeding, representing that this attachment reflects her own “analysis of Ameritech’s performance reporting,” in which she “compared Ameritech’s self-reported performance results with real data and discovered that the Company consistently overstated performance results.” Moore Aff. ¶ 21. Ms. Moore’s own testimony in the Michigan 271 proceeding rebuts these assertions in her Affidavit here. In the Michigan 271 proceeding, she represented Exhibit KWM-01 as follows:

As discussed subsequently, Mr. Ehr systematically analyzed the performance data using this “two out of three” standard, and the charts included as the Attachments to the Ehr Affidavit reflect the use of that standard. I have prepared charts that employ the correct “three out of three” standard, which not surprisingly result in a significantly lower percentage for performance measures met. Those charts are attached as Exhibit KWM-01.

Affidavit of Karen W. Moore On Behalf of AT&T Communications of Michigan and TCG Detroit, ¶ 13, filed Nov. 5, 2002 in Case U-12320 (Mich. Pub. Serv. Comm’n).

20. The issue Ms. Moore addressed with her Exhibit KWM-01 in the Michigan 271 proceeding is her alternate methodology for reviewing and assessing performance results as a whole over a multi-month period. She took issue in that proceeding with the methodology Ameritech Michigan used to analyze three consecutive months performance (a methodology that has been relied on by State commissions in the five SWBT States and the FCC in their approvals of § 271 Applications by Ameritech Indiana’s affiliate, IWDI). Ms. Moore’s Exhibit has absolutely nothing to do with the accuracy of an individual reported measure, or an entire

month's reported results. Most important, her Exhibit does not use any data other than the results Ameritech Michigan provided as attachments to my testimony in that proceeding. Hence, to claim that the analysis in Ms. Moore's Exhibit KWM-01 is somehow a comparison of (a) results Ameritech Michigan reported to (b) some other set of data that she possessed, misrepresents her own testimony in the Michigan 271 proceeding.

Payments Should Reflect the Level of Performance Provided

21. Payments to be made by Ameritech Indiana to CLECs and the State of Indiana as a result of performance on measures included within the IURC Remedy Plan should reflect (a) the level of performance Ameritech Indiana provided, and (b) the degree to which those results are less than perfect. In a performance plan designed to accept a 5% error rate (95% confidence that a result that shows failure to meet or exceed the standard is due to something other than random variation or chance, not in Ameritech Indiana's control), perfection is 95% of measures met. In other words, the highest level of performance Ameritech Indiana should be expected to achieve is 95% of measures met. At that level of performance, Payments due under the IURC Plan should be low.

22. The estimates provided in Table 3 of my Initial Affidavit reflected the amounts of Payments that would be due under the IURC Plan for performance in September 2002, when Ameritech Indiana reported nearly 97% of measures met. That level of performance should result in small Payment amounts. Ms. Moore, however, implies that nearly \$550,000 per month, or over \$6.5 million a year is small. While those may be small dollars for AT&T, they are not small dollars for Ameritech Indiana. Ms. Moore attempts to dismiss the issue in arguing,

essentially, that Ameritech Indiana can afford it. However, that is not the point. The point is that Ameritech Indiana should not be required to subsidize CLEC operations or provide a substantial stream of revenue to the State when the service levels provided clearly support and enable competition. Ameritech Indiana has volunteered in this cause to make Payments to CLECs when they are harmed by service that does not meet the agreed upon standards, at Payment levels where the money reflects a reasonable approximation of any damage or harm that might have been caused. This is the concept of liquidated damages and assessments included in the Original Ameritech Plan and the Ameritech Compromise Plan.

23. My Initial Affidavit in fact made no claim of financial harm regarding the estimated Payment amounts, as Ms. Moore incorrectly asserts. Rather, the Initial Affidavit simply points out that any Payments made to CLECs or the State of Indiana should reflect the degree of harm that may have been caused, and demonstrates that the amount of Payments that would in fact be required under the IURC Plan when Ameritech Indiana performs at high levels amount to subsidies for CLECs, as opposed to anything that resembles compensation for any harm incurred.

The “Step-Down” Table Was Proposed by Ameritech Indiana, Modified by the Commission, and Now Imposes Penalties on Ameritech Indiana

24. Ms. Moore’s discussion of my Initial Affidavit’s analysis of the “Step-Down” table – which she describes as my being “unhappy” with the Commission’s adopting only “a portion of Ameritech’s proposed modifications” to that table, Moore Aff. ¶ 25 – again misrepresents the facts. Ameritech Indiana never proposed modifications to a “Stop Down” table. Ameritech Indiana created, in negotiations with other CLECs, the concept of a “Step-

Down” table, and initially proposed the “Step-Down” table function as an integral part of the Ameritech Compromise Plan. Such a table did not exist prior to Ameritech Indiana’s proposal of the Ameritech Compromise Plan.

25. Ms. Moore also asserts that Ameritech Indiana gained a “huge victory” and a “major ‘win’” from the IURC Plan’s incorporation of a “Step-Down” table, as modified by the Commission, from the Ameritech Compromise Plan. Moore Aff. ¶ 26. This assertion displays a misunderstanding of how the “Step-Down” table works. The *only* function of the “Step-Down” table is to *increase* Payment amounts due when a measure is missed for consecutive months. The “Step-Down” table is an *additional* multiplier on Payment amounts that was not included in the Illinois Remedy Plan on which the IURC Plan is based.

**Ameritech Has Experience with Performance Measures Audits,
and Understands and Accurately Estimated Their Costs**

26. Ms. Moore also addresses my Initial Affidavit’s estimate of the costs Ameritech Indiana may incur for CLEC mini-audits, stating flatly that the estimate is “not accurate.” Moore Aff. ¶ 28. She first says the mini-audit process in the IURC Plan “is based upon Ameritech’s own proposed mini-audit process.” *Id.* While Ameritech Indiana does not disagree with the concept of mini-audits *per se*, the IURC Plan’s mini-audit component is not based on Ameritech Indiana’s proposal. Rather, the mini-audit was a component of the Illinois Remedy Plan on which the Commission based the IURC Plan. Ms. Moore further represents that my Initial Affidavit’s estimate is incorrect because payment of third-party auditor costs depends upon the result of the audit. *Id.* This ignores my express statement that “the additional costs of each mini-audit would exceed \$550,000 (*assuming Ameritech Indiana is found at fault and required to pay*

the auditor costs)." Initial Aff. ¶ 7 (emphasis added). There is in fact no disagreement that Ameritech Indiana bears mini-audit costs only when it is found "at fault" as defined in the IURC Plan.

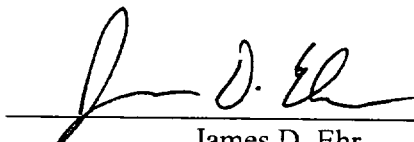
27. Ms. Moore also asserts that the Ameritech Compromise Plan calls for a different distribution of responsibility for audit costs than the IURC Plan does. Moore Aff. ¶ 28 & n.21, citing Ameritech Compromise Plan § 6.5. The Ameritech Compromise Plan in fact does not differ from the IURC Plan in this aspect, as a review of Section 6.5 of the Ameritech Compromise Plan confirms. The key issue regarding the mini-audit component of the IURC Plan is that it defines (in Section 15.2) very specific requirements and criteria for such an audit. These specific requirements, particularly the scope defined by the IURC Plan for mini-audits, will pose very significant financial burdens on *whomever* will pay the third-party auditor.

* * *

This concludes my Supplemental Affidavit.

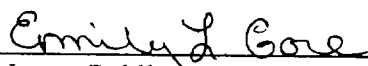
I affirm under the penalties for perjury that the facts set forth in this Affidavit are true and correct.

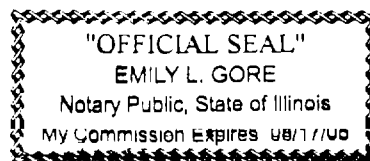
Dated this 22nd day of November, 2002.


James D. Ehr

STATE OF ILLINOIS)
)
COUNTY OF COOK)

Subscribed and sworn to before me this 22nd day of November, 2002.


Notary Public



CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2002 I caused a true and correct copy of the foregoing Supplemental Affidavit of James D. Ehr to be served to Ameritech271@urc.state.in.us.

A handwritten signature in black ink, appearing to read "Peter J. Rusthoven", is written over a horizontal line.

Peter J. Rusthoven [# 6247-98]